STATE OF MICHIGAN

COURT OF APPEALS

ARMOND C. ESTON,

Plaintiff-Appellant,

v

PARK PLACE DEVELOPMENT ASSOCIATES LIMITED PARTNERSHIP,

Defendant-Appellee,

and

PARK PLACE ASSOCIATES,

Defendant.

UNPUBLISHED
October 19, 2006

No. 269763
Wayne Circuit Court
LC No. 03-307046-NO

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant under MCR 2.116(C)(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell on defendant's premises in December 2001 and filed suit in March 2003. The trial court dismissed the action in 2006 for insufficient service of process. Because the limitations period had since expired, the trial court dismissed the action with prejudice.

We review de novo a trial court's ruling on a motion for summary disposition. *Gilliam v Hi-Temp Products, Inc*, 260 Mich App 98, 108; 677 NW2d 856 (2003). The construction, interpretation, and application of court rules is a question of law that is also reviewed de novo. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernan v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002).

Defendant was added as a party to this action in May 2003. The summons was valid until August 18, 2003. Because defendant is a limited partnership, plaintiff was required to effectuate service of process by personal service on the general partner or by substituted service. MCR 2.105(C). Because defendant's general partner is a corporation, plaintiff could effectuate service

by personal delivery to an officer or resident agent or by registered mail, return receipt requested, and delivery restricted to the addressee. MCR 2.105(D).

Plaintiff did not personally serve an officer or the resident agent. He obtained information that the general partner maintained an office on Southfield Road, but a visit to that location revealed that the general partner was no longer at that location. Although the general partner had filed a change of address in 1991, the Department of Commerce confirmed that the Southfield Road address was the general partner's last known address and plaintiff therefore mailed the summons and complaint to that address. Delivery was not restricted to the general partner, however, and was accepted by a person not affiliated with the general partner or the partnership. Therefore, plaintiff did not make service in compliance with MCR 2.105(C)(1).

Substituted service on a limited partnership may be made by "serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known address." MCR 2.105(C)(2).

Plaintiff did not serve a person in charge of a partnership office but did send the summons and complaint by mail to the general partner's last known address as reported by the Department of Commerce. That alone is not sufficient to make substituted service of process, but improper service of process is not a ground for dismissal as long as the defendant actually receives service of process within the life of the summons. MCR 2.105(J)(3); *Hill v Frawley*, 155 Mich App 611, 613-614; 400 NW2d 328 (1986). Here, it is undisputed that defendant's general partner never actually received a copy of the summons and complaint before November 15, 2005, well beyond the life of any of the summonses issued in this case. If there is a complete failure of service of process, the trial court does not acquire personal jurisdiction over the defendant and dismissal is warranted. *Holliday v Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991); *Alycekay Co v Hasko Constr Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989). Therefore, the trial court did not err in granting summary disposition under MCR 2.116(C)(3).

Plaintiff argues that even if the case was subject to dismissal, the court erred in dismissing the case with prejudice because the limitations period was tolled while the case was pending. We disagree. "Whether a prior lawsuit between the parties, which has been dismissed without an adjudication on the merits, tolls the statute of limitations is determined by MCL 600.5856[.]" *Sanderfer v Mt Clemens Gen Hosp*, 105 Mich App 458, 461; 306 NW2d 322 (1981). The current version of that statute, in effect at the time the trial court decided defendant's dispositive motion, provides, in pertinent part:

> The statutes of limitations or repose are tolled in any of the following circumstances:
>
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
>
> (b) At the time jurisdiction over the defendant is otherwise acquired.

Plaintiff never made service of process on defendant during the life of the summons and plaintiff does not contend that the trial court "otherwise acquired" jurisdiction over defendant. Because service of process was never made on defendant during the life of the summons, the pendency of this action would not toll the limitations period for purposes of determining the timeliness of a second suit. *Sanderfer, supra*. Therefore, had plaintiff filed a second complaint at any time after dismissal of this suit, it would have been time-barred, the limitations period having expired in December 2004. Accordingly, the trial court did not err in dismissing plaintiff's complaint with prejudice.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens